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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,068	01/22/2002	David Boyd Melvin	CCX-103US2	7331
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EXAMINER ISABELLA, DAVID J				
ART UNIT		PAPER NUMBER		
3738				
DATE MAILED: 12/16/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,068

Applicant(s)

MELVIN, DAVID BOYD

Examiner

DAVID J ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-57 is/are pending in the application.
- 4a) Of the above claim(s) 28-30, 34-36, 39, 40, 42-47, 49-51, 54 and 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27, 31-33, 37, 38, 41, 48, 52, 53, 55 and 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

Claims 28-30,34-36,39,40,42-47,49-51,54and 57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

Applicant's election with traverse of the species depicted in Figure 5 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that examiner misidentified the patentably distinct species. This is not found persuasive because the species have been identified according to applicant's specification. In the Brief Description of the Drawings, Figures 5,7,11,13,14,15,16A,16B,17,18,25 and 27A-C are described as alternative embodiments. With respect to Figure 7, it is not clear from the specification what "other" portion of the device this element represents. Applicant elected the embodiment illustrated in Figure 5. Figures 6 and 7 are described as being enlarged perspective view of a portion and another portion of the assembly. It is not clear from the description in the specification if these two portions are the same and different embodiments. Accordingly, if it is clear from the specification that a illustrated figure has more than one view, not embodiments, then examiner agrees that these illustrated views will be grouped along with the main illustrated figure.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim fails to further limit the structure of the device of claim 37. The language of the claims is directed to a method step for placing the first member adjacent to the chamber of the heart.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 27 rejected under 35 U.S.C. 102(e) as being anticipated by Schweich, Jr, et al (5961440).

Schweich, Jr. et al discloses a device for treating the heart by deforming one chamber of the heart comprising a first member configured to be positioned adjacent the exterior surface of the chamber and a second member coupled to the first member

Art Unit: 3738

to restrict free movement of the chamber while providing resistance against the pressure applied by the first member. (See figures 3, 13-16, 27, 34, 35, 37)

Claim 31, using the selected embodiments listed supra would perform the function outlined in the claimed method for deforming one chamber of the heart by providing a first member to overlie a first portion of the outer wall and a second member attached to the first member causing the first member to press inwardly to form an indentation while the second member restricts free movement of the chamber and resisting pressure applied to the first member.

Claims 32 and 33 embodiment illustrated in figures 15 and 16 show first members 258 and second member 254.

Claim 37 as broadly worded fails to distinguish over Schweich, Jr. et al (see selected illustrated embodiments to claim 27 supra.

Claim 38, in so far as further limiting the structure of the first member fails to distinguish over the corresponding first members illustrated in Schweich, Jr. et al.

Claim 41, is another way to claim the device of claim 27. See rejection to claim 27 supra.

Claim 48, is another way to claim the method similar to the method of claim 31. See rejection to claim 31 supra.

Claim 52, is another way to claim the device of claim 27. See rejection to claim 27 supra.

Claim 53, see corresponding embodiments of Schweich, Jr. et al.

Art Unit: 3738

Claim 55, is another way to claim the device of claim 27. See rejection to claim 27 supra.

Claim 56, see corresponding embodiments of Schweich, Jr. et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


DAVID J ISABELLA
Primary Examiner
Art Unit 3738

DJI
DECEMBER 7, 2003